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AKINTOLA, OLABODE				
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES MICHAEL FITZPATRICK

Appeal 2010-001946
Application 09/730,592
Technology Center 3600

Before: HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 (2002) the rejection of claims 5-23, 28-39, 50-52, and 55 which are all the claims pending in the application and which have been twice rejected. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We AFFIRM.

THE CLAIMED INVENTION

The Appellant's claimed invention is a database, method, and system whereby accurate prices paid for products in stores are captured at a frequent shopper card level and archived for consumer access and market analysis. (Specification 1:7-9). Claim 5¹ is illustrative of the claimed subject matter:

1. A computer-implemented method comprising the steps of:

obtaining information from a plurality of retail stores to determine an identification and price paid for purchased items;

recording in a central price-paid database remote from the retail stores at least one of an item identification and the price-paid for each of the purchased items by recurrently obtaining on a predetermined schedule from checkout computers at the retail stores said information about the price paid for purchased items; and

publishing the price-paid database.

2. The method of Claim 1, wherein the step of obtaining the information comprises:

¹ Claim 5 depends from canceled claims 1 and 2, which are included to fully illustrate claim 5.

obtaining a customer identification associated with each purchased item.

5. The method of Claim 2, wherein the step of obtaining the information comprises:

recording the identification and the price paid for each of the purchased items in the checkout computer; and

recurrently uploading the recorded identification and the price-paid to a central computer containing the price-paid database.

THE REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Daniel	US 4,972,504	Nov. 20, 1990
Reuhl	US 5,873,069	Feb. 16, 1999
Riordan	US 6,078,891	Jun. 20, 2000

The following rejections are before us for review²:

1. Claims 52 and 55 are rejected under 35 U.S.C. § 101 as reciting unpatentable subject matter.
2. Claims 5-7, 9, 14-15, 18, 23, 28-30, 34-36, 50-52, and 55 are rejected under 35 U.S.C. § 103(a) over Daniel and Reuhl.
3. Claims 8, 10-13, 17, 19-22, 31-33, and 37-39 are rejected under 35 U.S.C. § 103(a) over Daniel, Reuhl, and Riordan.

² The cited claims listed below all depend from a cancelled independent claim. The following rejections are based on the merits despite the Appellant not placing these claims in independent form.

ISSUES

With regards to the rejection under 35 U.S.C. § 101 the issue turns on whether the “database” as claimed is a category of patentable subject matter.

With regards to the rejection under 35 U.S.C. § 103(a) the issue turns on whether the prior art discloses the argued claim limitations.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence.³

FF1. Daniel has disclosed a marketing research system for obtaining data on a real time basis. (Title).

FF2. Daniel discloses that in each retail store a device collects, processes, and stores retail sales transaction data and that periodically this data is transmitted through a bidirectional communications network to a central site for further processing. (Col. 7:5-18).

FF3. Daniels does not disclose a data transfer based on a predetermined number of purchases at 7:14-45, 16:20-35, and 19:36-56.

ANALYSIS

Rejections under 35 U.S.C. § 101

Appellant argues the Examiner erred by asserting the claims at issue are “directed to a computer program per se or data structure of a computer or software.” (Appeal Br. 11). See also the Reply Brief at page 4.

³ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

Claims 52 and 55 recite a database with data fields and their contents, and are thus construed as claiming an assortment of data, which is not an eligible category of patentable subject matter. The contents of the data fields are non-functional descriptive material and are not afforded no patentable weight. We therefore affirm the rejection of claims 52 and 55.

Rejections under 35 U.S.C. § 103

Claims 5-23, 28-39, and 50-52

The Appellant argues that Daniel does not disclose the claimed step of recording the identification and the price paid for each of the purchased items in the checkout computer (Appeal Br. 16).

In contrast, the Examiner argues Daniel recites the cited claim limitation (Ans. 6, 12).

We agree with the Examiner. Daniel discloses that in each retail store a device collects, processes, and stores retail sales transaction data and that periodically this data is transmitted through a bidirectional communications network to a central site for further processing (FF2). Thus, Daniel meets the argued claim requirements since the data is stored (recorded) and we affirm the rejection of claim 5, and dependent claims 6-23, 28-33, 34-39, and 50-52 which are not separately argued or contain a similar claim limitation. A statement that merely points out what a claim recites will not be considered an argument for separate patentability of the claim. 37 C.F.R. 41.37(o)(1) 2008.

Claim 55

Appellant argues the Examiner does not address a limitation of claim 55 because Daniel does not disclose the receiving of data after a predetermined number of purchases (Appeal Br. 22).

In contrast, the Examiner argues Daniel recites the claimed requirements at columns 7:14-45, 16:20-35, and 19:36-56 (Ans. 5, 12).

We agree with Appellant, because Daniels does not disclose a data transfer based on a predetermined number of purchases (FF3). We therefore do not sustain the rejection of claim 55 under Section 103.

CONCLUSIONS OF LAW

We conclude that the Appellant has not shown the Examiner erred in rejecting: claims 52 and 55 under 35 U.S.C. § 101, claims 5-23, 28-39, and 50-52 under 35 U.S.C. § 103.

We conclude that the Appellant has shown the Examiner erred in rejecting claim 55 under 35 U.S.C. § 103.

DECISION

For the above reasons, the Examiner's rejection of claims 5-23, 28-39, 50-52 and 55 is AFFIRMED.

AFFIRMED

MP